

EXHIBIT 107

In The
United States District Court
District of Delaware

IN RE: MARVEL ENTERTAINMENT GROUP, INC., et al.,

Debtors,

-VS-

MARVIN WOLFMAN,

CASE NO. 97-638 (RRM)

DEPOSITION
OF
ROY THOMAS
October 13, 1999



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TRANSCRIPT™

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THOMAS, ROY**Condenselt™****IN RE: MARVEL ENTERTAINMENT**

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UNITED STATES DISTRICT COURT

DISTRICT OF DELAWARE

IN RE: MARVEL ENTERTAINMENT GROUP, INC., ET AL.,

Debtors,

CASE NO. 97-638 (RRM)

vs.

MARVIN WOLFMAN

PARTIAL TELEPHONE
DEPOSITION OF: ROY THOMAS

DATE: October 13, 1999

TIME: 6:30 PM

LOCATION: Fairfield Inn
663 Citadel Road
Orangeburg, SC

TAKEN BY: Counsel for the Debtors

REPORTED BY: LESLIE TOOLE STANLEY,
Certified Shorthand Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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STIPULATION

It is stipulated by and among Counsel that this deposition is being taken in accordance with the Federal Rules of Civil Procedure, that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent does not waive reading and signing of this deposition.

* * * * *

ROY THOMAS,

being first duly sworn, testified as follows:

EXAMINATION

BY MS. KLEINICK:

Q. Can you please state your full name and address for the record, please?

A. Roy William Thomas, Junior. My address is Route 3, Box 468, St. Matthews, South Carolina 29135.

Q. Mr. Thomas, I'm going to show you a document. I'd like to have this marked as Thomas Exhibit 1 for identification. And I'll ask you if you recognize it.

MS. KLEINICK: This is a subpoena, Michael.

MR. DILIBERTO: Okay.

THE WITNESS: Okay --

(THOMAS EXH. 1, U. S. District Court

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APPEARANCES OF COUNSEL:

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(310) 557-1511
(Appearing via telephone)

(INDEX AT REAR OF TRANSCRIPT)

Subpoena, was marked for identification.)

BY MS. KLEINICK:

Q. Okay --

A. Because I didn't pay much attention to it -- it looks like the subpoena.

Q. Are you testifying here pursuant to a subpoena?

A. Yes.

Q. Mr. Thomas, describe your educational background.

A. Regular school, high school, went to college at Southeast Missouri State College, now University, in Cape Gerardo, Missouri. Graduated there in 1961.

Q. What was your degree in?

A. BS, Bachelor of Science, in Education.

(Off-the-record conference.)

BY MS. KLEINICK:

Q. When you graduated from college, what did you do for employment?

A. I taught high school English for four years in a couple of high schools in Missouri.

Q. So that would be until 1965, approximately?

A. 1965, yes.

Q. And what did you do -- what subjects did you teach while you were teaching between '61 and '65?

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1 were staff work.

2 Primarily, after the first few, everything I
3 wrote was written freelance. It was written outside
4 the office hours.

5 Q. Okay, and for the material that you were
6 writing on a freelance basis, how were you paid?

7 A. I got a separate check for my salary, I
8 believe. In other words, I think it was a separate
9 check that came. I couldn't swear to that, but I've
10 always had the memory -- I know it was figured
11 separately, but perhaps they put them both on the same
12 check, but that varied week to week. There were no set
13 assignments.

14 Q. For freelance work you were doing, were you
15 paid by the page?

16 A. Yes.

17 Q. Did you have any written agreement with
18 Marvel at that time?

19 A. No.

20 Q. Who did you have to report to while you were
21 a staff writer for Marvel?

22 A. Are you -- do you mean just those couple of
23 weeks before it sort of changed or during that whole
24 period when I was -- what would amount to an Assistant
25 Editor, during that several months --

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1 Q. When did you become an Assistant Editor at
2 Marvel?

3 A. It was kind of -- kind of vague. It
4 metamorphosed over a period of weeks. It was clear I
5 was not going to be doing staff writing, and so I was
6 then referred to as kind of an Assistant Editor. It
7 was kind of vague. But I reported primarily to Stan
8 Lee as the Editor-in-Chief. The term on the books was
9 Editor.

10 I also, to some extent, was -- between there,
11 there was the Production Manager, Saul Brodski, and he
12 sort of gave me my marching orders. That was on behalf
13 of Stan, really.

14 Q. What responsibilities did you have as
15 Assistant Editor at Marvel?

16 A. Just to do whatever needed doing. Primarily,
17 it meant backup proofreading on the books that Stan had
18 proofed on his own. I would try to see to it that the
19 corrections had been done. Increasingly, as I was
20 writing, I would also be doing backup proofing on my
21 own, and a couple of other people's writing, and that
22 included looking at the finished art.

23 Other than that, sometimes I would have to
24 write a bit of interior copy for an ad or something of
25 that sort or suggest ideas for these bullpen bulletins

1 they had that were kind of a fan page. It was sort of
2 an apprenticeship.

3 Q. Were you responsible in any way for
4 overseeing the production side of the comic books?

5 A. Not really. Saul Brodski did that. I
6 assisted him and carried messages back and forth. We
7 had a whole two rooms and so forth -- but I really
8 wasn't in production. Once or twice, I would do things
9 in production and Stan would not want me to spend my
10 time doing that.

11 Q. Were you assigned to edit particular issues
12 or titles?

13 A. No, I've just -- I did backup proofreading on
14 everything, including the books that I wrote as I began
15 to do more writing that Stan would proofread to see
16 what he liked and didn't like. I would do the backup
17 proofreading on that. It was basically the backup
18 proofreading; then increasing it with a couple of other
19 writers coming in.

20 Sometimes there was something that Stan
21 wouldn't read so carefully. But it was the whole
22 general line. I worked on every title we had in one
23 capacity or another.

24 Q. Okay. How did you -- during the time you
25 were Assistant Editor, how did you get your writing

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1 assignments?

2 A. Well, they came from Stan. I won't say that
3 sometimes Saul Brodski might not have been the
4 intermediary, but it was basically Stan that made the
5 assignments -- one day, I want you to write this or I
6 want you to write that.

7 Q. During this time, were these assignments for
8 particular issues or were they for a particular series?

9 A. I was -- in the early days, they were tryouts.
10 and Stan didn't feel I was ready to take it over
11 totally, so I kept working at it, and then with a book
12 called -- I did have the regular assignment of the two
13 Millie the Model comics for three or four months.

14 There was Millie the Model. And there was
15 Millie -- there was one that died after one issue.
16 These were supposed to be regular assignments of mine.
17 And I did a couple of stories that were half an issue
18 of Dr. Strange.

19 The first adventure series that became a
20 regular assignment was Sergeant Fury and his Howling
21 Commandos.

22 Q. When you refer to something as a regular
23 assignment, is it the same as saying -- just so we can
24 clarify the record, that you are the writer for a
25 series?

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1 Q. So between 1972 and '74, you held the
2 position of Editor-in-Chief; is that correct?

3 A. Yes, the book said Editor, but that was just
4 for show. We just put Editor on the books. Everyone
5 else was an Assistant Editor.

6 Q. Okay, what -- after the art responsibilities
7 and the writing responsibilities were merged, what were
8 the responsibilities that you had as Editor-in-Chief?

9 A. Just to see to it that the books had the best
10 level of story and art that we could get out. The
11 Production Manager handled most of the trafficking -- I
12 didn't have to do a lot of that kind of donkey work --

13 Q. Did you say trafficking?

14 A. Yes, the Production Manager, later replaced
15 by John, handled that aspect of things, so all I had to
16 do was meet with the writers, some artists, look over
17 the material, confer with Stan or whoever needed to be
18 conferred with and do whatever I had to do. But I
19 didn't have to do all these little day-to-day things.
20 It would not have been my specialty anyway.

21 I was not -- I was not somebody who was going
22 to be that organized. I just came in and did whatever
23 needed to be done.

24 Q. Was Editor-in-Chief a full-time position?

25 A. Yes, I had been only coming in two or three

1 through.

2 Of course, I had time to work on my own. And
3 because of this situation -- well, a situation arose
4 that I was uncomfortable with; I refused to carry out a
5 directive which Stan gave me, and decided -- we decided
6 that my written refusal to do so would be my letter of
7 resignation and that was fine with me, so I was -- I
8 left effective as soon as I could possibly get out of
9 there.

10 Q. After you resigned as Editor-in-Chief of
11 Marvel, did you continue to write or edit any scripts
12 for Marvel?

13 A. Yes, Stan and I -- despite this disagreement,
14 we were on good terms and I think he just saw I was not
15 that kind of company man and so forth, as far as going
16 along with whatever the company would say, so I -- he
17 asked me if I would sign a contract to be a writer and
18 I'm not sure exactly how it came up, but it happened
19 that it became a writer and editor contract. I know
20 that I -- at some time, I insisted on this, because I
21 did not want any successors to be able to come between
22 me and Stan.

23 Q. When you say writer and editor contract, are
24 you referring -- the editor part of that, are you
25 referring to responsibilities that you had to edit your

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1 days a week before that, and then I wrote freelance the
2 rest of the time. But with the Editor -- when I became
3 Editor-in-Chief, I had to start five days a week.

4 Q. Did you receive a salary in connection with
5 the position you held as Editor-in-Chief?

6 A. I don't recall exactly what it was.

7 Q. And while you were Editor-in-Chief, were you
8 still writing stories for Marvel?

9 A. Yes.

10 Q. Were you paid additional compensation for the
11 material you were writing for Marvel from your
12 Editor-in-Chief salary?

13 A. Yes, not for cover copy I wrote as Editor,
14 but the story writing was all freelance.

15 Q. And for freelance work you were doing for
16 Marvel, were you being paid by the page or by some
17 other method?

18 A. No, I was paid by the page.

19 Q. After you resigned -- how did you come to
20 leave your position as Editor-in-Chief of Marvel?

21 A. Basically, I decided -- I had been restive in
22 the position and didn't find it especially fulfilling
23 to oversee dozens of books a month and not be able to
24 deal personally, individually, with a lot of them. I
25 barely had time to read some of the books as they came

1 own material or edit other writers' material?

2 A. It was primarily my own material, especially
3 when it started in '74 and '75. Later on, there were
4 some books that I would be placed in charge of, and I
5 did have the authority to -- I don't know if it was in
6 writing or they just let me do it, but I did hire some
7 people to do a story and perhaps just a plot or
8 dialogue for a limited time, but there were two or
9 three titles where I did that.

10 Primarily, I was to be a writer myself. I
11 evolved into something where I could occasionally have
12 someone else do the writing, and I could just edit it.
13 That was not the main purpose, originally.

14 Q. While you were a writer and editor at Marvel,
15 were you paid a set salary?

16 A. Yes.

17 Q. And under your contract, were you required to
18 write a specified number of pages?

19 A. Yes, and the editing was counted as being in
20 lieu of some of those pages. Like the editing per book
21 would amount to a certain amount of money, and each
22 page would be some more, and I had a monthly quota, 50
23 or 70 or whatever pages, and I was paid that regular
24 basis.

25 Q. Were there ever occasions where you wrote

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1 numbers of pages that exceeded your obligation under
2 your contract?

3 A. I suspect so, but I could not swear to that.

4 Q. Okay, do you know what the term of your
5 contract was?

6 A. Yes, there were two of them -- I guess they
7 were -- I'm pretty sure they were three years apiece.
8 The two together ran from 1974 to running out in late
9 1980, and I'm pretty sure they were both three-year
10 contracts. Or maybe it would be two and four, I
11 believe, but --

12 Q. Okay.

13 A. I haven't looked at them, of course, in some
14 years.

15 (Off-the-record conference.)

16 BY MS. KLEINICK:

17 Q. Do you know an individual by the name of
18 Marvin Wolfman?

19 A. Yes, I do.

20 Q. How did you first come to know Marvin
21 Wolfman?

22 A. I don't recall the exact occasions, but I
23 have this feeling that I met him with his friend at
24 comic stands -- possibly at the office, perhaps at
25 convention or something of that sort. I'm not sure

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1 how. But as a comic --

2 Q. Do you recall when you first met Mr. Wolfman?

3 A. Not exactly. It would have been something
4 like 1966 or '67, somewhere a year or so after I came
5 to work, probably. I don't think it was right away, so
6 it was probably '66, '67.

7 Q. Did there come a time that Marv Wolfman began
8 writing scripts for Marvel?

9 A. Yes.

10 Q. Do you recall when that was?

11 A. Not exactly. But it was around 1969 or 1970,
12 when I was still Associate Editor.

13 Q. Do you recall what titles Marv was writing
14 for when he first came to Marvel?

15 A. I don't recall the exact titles, but we had
16 two or three books that were interchangeable. But they
17 were mystery books, sort of mild horror titles, with
18 titles like Tower of Shadows or Chamber of Darkness. I
19 think Marv's first story might have been Chamber of
20 Darkness. He had been working for D. C., and he came
21 over -- I put him in one of those titles at that time.

22 Q. Are you familiar with the Tomb of Dracula
23 series that Marvel published?

24 A. Oh, yes.

25 Q. Were you the editor for that series?

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1 A. Originally, I would have been called
2 Associate Editor. It started before my time. Although
3 I actually did real plotting, my name wasn't on it in
4 any capacity.

5 Q. Do you recall how the idea for the Tomb of
6 Dracula series first came up?

7 A. Yes, Stan wanted to do a book with Dracula as
8 the hero. Not making him a good person, or a good
9 vampire, but treating him as Dracula. And he came up
10 with a -- sort of one or two or three -- like a two- or
11 three-sentence idea, which a descendant of Dracula went
12 to a castle and accidentally brought Dracula back to
13 life. I took it home and made a full two- or three- or
14 four-page plot for artist Jean Cole out of that. I
15 don't know the year, but I think I finished it late on
16 New Year's Eve, and arrived late at a party.

17 Q. Can you describe the process at Marvel,
18 between 1972 and 1978, with respect to how a new series
19 or title would come to be published?

20 A. You're talking '72, after I became Editor?
21 Or before --

22 Q. Was there a difference?

23 A. Yes, the difference to some extent was that I
24 became a little more of an official part of the process
25 in 1972, in the middle of '72. Before that, I would --

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1 I was an Associate Editor, and I did what almost
2 amounted to hiring, although I had to have these things
3 approved by Stan on my own or through Saul Broadski,
4 but once I became Editor-in-Chief, it was my
5 responsibility to hire people.

6 I was still responsible to say yes or -- to
7 Stan if he cared to say yes or no. What I was supposed
8 to do was take the day-to-day basis of a lot of his
9 editorial work off his hands, which before that, I had
10 been doing on and off.

11 Q. Let's talk about the time period when you --
12 after you became Editor-in-Chief. How would an idea
13 for a new series typically originate?

14 MR. DILIBERTO: Objection, vague.

15 THE WITNESS: Well, it could -- the problem,
16 of course, is in the word typically, because while
17 there was a general pattern, it could have -- if things
18 like -- things did happen in other ways as well. Stan
19 increasingly, sometimes myself, would come with an idea
20 for a comic -- would come up with an idea for a comic
21 and then if it was I who did it, I would, of course,
22 have to get it approved by Stan.

23 If Stan did it, he told me what he wanted.

24 Then we would set these things in motion. Sometimes
25 that was left more to me and sometimes was more in the

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1 process. In those days most of them came -- most of
2 them were an idea of an editor, and I would say mostly
3 Stan's.

4 BY MS. KLEINICK:

5 Q. Okay.

6 A. But there were exceptions.

7 Q. If the idea for a series during that time

8 originated with you --

9 (Off-the-record conference.)

10 BY MS. KLEINICK:

11 Q. After the new idea -- after the idea for a
12 new series originated, who would determine whether or
13 not that new series would become a new Marvel title?

14 MR. DILIBERTO: Objection. Vague as to which
15 series we're talking about.

16 THE WITNESS: Well, any series would have
17 been decided by Stan after the middle of the year.
18 Once he became President and Publisher, he made the
19 final decision on that.

20 BY MS. KLEINICK:

21 Q. Did you have authority as Editor-in-Chief to
22 authorize a new series or title without approval --
23 without Stan's approval?

24 A. No.

25 Q. At that time, did a writer have authority to

1 continuing series and a horror comic, and so it just
2 seemed a logical choice to ask Marv to take over -- I
3 don't remember when or how or over the phone or
4 whatever -- but I did it.

5 Q. Was it your understanding that Marv was
6 taking -- was being hired as the writer for the series
7 or -- or was it your understanding that he was being
8 hired to write a particular issue of a series?

9 A. He was being hired as the writer of the
10 series. Had I been or had Stan noticed and been
11 unhappy with the writing, we could have taken him off
12 of it immediately. But I hired anybody with the idea
13 they would take over the whole series. That's what I
14 was looking for, not just one issue.

15 Q. Can you describe whether or not Marvel had a
16 process for determining how a particular writer,
17 artist, penciller and colorist are assigned to a
18 series? Who needs to be consulted in the process?

19 A. Even when I was Editor-in-Chief, I would have
20 consulted in some major books, probably with Stan. I
21 might have told him after the fact, in some books that
22 he had more of an interest in. If he had started, I
23 would not have made a move on Spiderman without
24 conferring with him and getting his approval. It was
25 really -- I had been doing some of that as Associate

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1 authorize a new series or title on his own?

2 A. No.

3 Q. Do you recall how Marv Wolfman started
4 writing -- how Marv Wolfman came to write the Tomb of
5 Dracula series for Marvel?

6 A. I don't remember every detail. What I do
7 know is that we had had a total of about three
8 different writers for the first few issues, not
9 counting Stan's idea, not counting my plot. We had
10 Jerry Conway. We had Archie Goodwin. And especially
11 recently, the issue -- the writing just was not going
12 terribly well. They were all good writers; but the
13 book didn't seem to be going anywhere.

14 Gardner Fox was a writer who had never been a
15 Marvel writer, so I had to find someone else to do the
16 book. And I thought of Marv, because he had done such
17 a good job doing these mystery stories, the one or two
18 he had done earlier. He had done some writing for
19 D. C., a lot of stories of that same kind, House of
20 Secrets, that kind of thing.

21 Although I'm vague myself as to what he was
22 doing at that time, I knew that he was -- still was the
23 Editor of the Warren Magazine, plus I knew he
24 understood heroes. He liked superheroes, and we were
25 trying to tightrope between a hero and regular

1 Editor.

2 I still was subject to Stan, and I was not
3 eager to get out from under that because we worked
4 pretty well as a team. We saw each other several days
5 a week, so it was no inconvenience. I never thought
6 about trying to keep him out of the process.

7 Q. Was it -- was the practice the same for a new
8 series as it was for a pre-existing series?

9 A. What practice do you mean exactly? I want to
10 make sure I understand the question fully before I
11 answer it.

12 Q. How did the determination get made --
13 withdrawn.

14 (Off-the-record conference.)

15 MS. KLEINICK: I'm sorry, I withdraw the
16 question.

17 BY MS. KLEINICK:

18 Q. Was the Editor-in-Chief responsible for
19 assigning a writer to a new series?

20 A. Yes.

21 Q. Did anyone else participate in the decision
22 to assign a writer to a new series?

23 A. Stan would have participated. I would have
24 gotten his approval before I would have made any
25 definite decision like that almost certainly, whether I

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1 did in any individual case -- I can't always remember
2 that, but I had that general process.

3 Q. Did a freelance writer for Marvel have the
4 authority to assign himself or herself to write a
5 particular comic book issue or a series for Marvel?

6 A. No, those assignments were made by me and
7 occasionally by Stan. Once or twice, he might have
8 almost bypassed me -- he might forget occasionally, and
9 wouldn't always go through channels, but almost always,
10 it was, after mid-1972, for those years, it was my
11 decision.

12 Q. Were there writers at Marvel who self-edited
13 their own scripts between 1972 and 1974?

14 A. To a certain extent, they all did. Almost
15 all of them. I couldn't -- since I only had a couple
16 of Assistant Editors, and didn't necessarily have
17 anyone that I had enough faith in to give them that
18 much authority right off the bat, I tended to trust the
19 writers, and all of the -- when I was doing freelance
20 work, they became sort of defacto editors, subject to
21 me, subject to Stan. But other than that, they were
22 pretty close to being -- subject to being -- they came
23 pretty close to being unpaid editors in exchange for
24 which they got a certain amount of freedom and had
25 certain responsibility along with it.

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1 Q. Did a person who was writing and editing
2 their own material have the authority to assign himself
3 or herself to write an issue of a different series that
4 they weren't asked to write by you or Stan?

5 A. No.

6 Q. Did Marvel have a production schedule for the
7 issues that Marvel published between 1972 and 1978?

8 A. You mean like when they had to come in the
9 house and when they had to leave?

10 Q. Yes.

11 A. Yeah, it didn't always get met, but it was
12 there.

13 Q. Who was responsible for setting that
14 schedule?

15 A. The production manager.

16 Q. That was Saul Broadski at the time?

17 A. Well earlier, but -- I should -- I should
18 know better, but Saul left the company, about 19 --
19 1970 or so, because by the time I became
20 Editor-in-Chief, the production manager was John. And
21 had been for -- I don't know, maybe a year or so there,
22 and although Saul returned to the company, he returned
23 in a different capacity. A sort of -- in a different
24 direction. John was manager until he died in December
25 of 1977.

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1 Q. Were the issues for the Tomb of Dracula
2 series scheduled to be published at regular intervals?

3 A. Every month. It went monthly somewhere in
4 there. About that time, I think. So it was selling
5 reasonably well.

6 Q. As --

7 A. I haven't checked on this, but I think it
8 started as bimonthly, but it was still on a regular
9 schedule, whichever it might have been.

10 Q. Do you recall what issue number Marv Wolfman
11 started writing for the Tomb of Dracula series?

12 A. I don't recall, but I looked it up, and I
13 remember reading the deposition awhile ago that said it
14 was number seven. I knew it was something like that.
15 If someone asked me, I might have said five or six or
16 eight. The number didn't really mean that much to me.
17 I knew there had been these writers before, so there
18 had been five or six issues. But I did start --
19 somebody else had totally finished off -- finished the
20 preceding issue, so he --

21 Q. After Marv Wolfman took over as a writer for
22 the Tomb of Dracula, was he required to submit a
23 specified number of issues to Marvel in any particular
24 time period?

25 A. Only in the sense that it was a monthly -- if

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1 it was becoming a monthly book, he had to keep things
2 on schedule, subject to the Production Manager, and
3 technically to me to see to it that that schedule was
4 met and that, you know, we had something ready to go
5 out every month. That was sort of his informal
6 responsibility, which he helped with in exchange for
7 being let alone to do a lot of other things.

8 Q. Did you have any discussions with Marv
9 Wolfman about the Tomb of Dracula series, what it was
10 about, before he accepted the assignment as the writer
11 for the series?

12 A. Well, there would be two answers to that.
13 First, I have no exact knowledge or memory rather --
14 except that I know I would have talked to him in
15 general about just the fact that, you know, the book
16 wasn't doing too well, and I just needed to goose it up
17 a little bit.

18 And you know, that I needed good stories and
19 so forth. I may have said more than that, but I have
20 no memory of what it would have been. I don't know how
21 much direction I gave him, but I don't suspect it was a
22 terrible amount.

23 Q. Is it -- was it your usual practice to have
24 periodic discussions with a writer of a series as a
25 series progressed, to discuss the general direction

IN RE: MARVEL ENTERTAINMENT

CondensIt™

THOMAS, ROY

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1 from what you thought Marv should publish --
 2 A. Yes.
 3 MR. DILIBERTO: Objection, irrelevant.
 4 BY MS. KLEINICK:
 5 Q. If Wolfman had submitted a script that Marvel
 6 believed was unacceptable for some reason, was Marvel
 7 required to obtain Wolfman's approval before changing
 8 that script?
 9 MR. DILIBERTO: Objection, calls for
 10 conclusion, incomplete, hypothetical.
 11 THE WITNESS: No.
 12 BY MS. KLEINICK:
 13 Q. If Wolfman and Marvel had a disagreement with
 14 respect to either the direction a series should take or
 15 the contents of any particular issue, who was the
 16 one -- who would have the final authority to determine
 17 what got published?
 18 A. The final authority was Stan. Since Stan
 19 would not involve himself in the day-to-day work,
 20 unless there was something he personally saw or
 21 something he took an interest in, that was my
 22 responsibility.
 23 Q. Was that true with respect to all of the
 24 freelance writers at Marvel?
 25 A. Well --

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1 MR. DILIBERTO: Objection, no foundation.
 2 THE WITNESS: Yes, it was.
 3 BY MS. KLEINICK:
 4 Q. Did Marvel have any practice with respect to
 5 who had the right to make final determinations as to
 6 what got published, the freelance writer or the
 7 company?
 8 A. There wasn't any doubt that Stan or I could
 9 make any change that we needed to have in a story or
 10 anything else, subject only to the fact that we had to
 11 have the book out of there on some kind of schedule.
 12 But Stan or I could do that. No one else had the
 13 authority to make changes without checking with me.
 14 The Assistant Editors did not. They might sometimes
 15 could take that authority, but they didn't really have
 16 it, unless it was a typo or an obvious word thing or
 17 something.
 18 Q. If Marvel disagreed with language contained
 19 in the script submitted by a freelance artist, and that
 20 freelance -- the freelance writer, and that writer
 21 refused to revise the script, what recourse, if any,
 22 did Marvel have?
 23 MR. DILIBERTO: Irrelevant.
 24 THE WITNESS: We would have changed the
 25 script. I would say if a writer really objected

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1 strongly to some change, and you have a lot of respect
 2 for the writer, then you are a fool if you don't at
 3 least try to find out why the writer objects to having
 4 that changed. You may have a reason you haven't
 5 thought of. Nobody is perfect. In the end, it was my
 6 responsibility and my authority to make any change I
 7 felt like I needed to make.
 8 BY MS. KLEINICK:
 9 Q. As part of your responsibilities as an editor
 10 of a series or in your capacity as Editor-in-Chief, did
 11 you have the authority to supervise the freelance
 12 writers with respect to any characters that they wanted
 13 to introduce into the scripts they submitted to
 14 Marvel?
 15 (Off-the-record conference.)
 16 MR. DILIBERTO: Could you repeat the
 17 question?
 18 (Question read back.)
 19 BY MS. KLEINICK:
 20 Q. As part of your responsibility as an Editor
 21 of a series or in your capacity as Editor-in-Chief of
 22 Marvel, did you have the right to direct or supervise a
 23 freelance writer with respect to any new characters
 24 that they wanted to introduce into the scripts they
 25 were writing for Marvel?

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1 MR. DILIBERTO: Objection, irrelevant.
 2 THE WITNESS: Yes, I did have that authority
 3 if I wanted to exercise it.
 4 BY MS. KLEINICK:
 5 Q. Did that authority include the right to
 6 changes in features or back story of any new character
 7 that a writer wanted to introduce into a Marvel
 8 series?
 9 MR. DILIBERTO: Objection, irrelevant.
 10 THE WITNESS: Yes, it did.
 11 BY MS. KLEINICK:
 12 Q. Did that authority also include to write, to
 13 supervise and direct how that writer would use the
 14 characters in a script?
 15 MR. DILIBERTO: Same objection.
 16 THE WITNESS: If I wanted to yes, I had that
 17 right, that authority.
 18 BY MS. KLEINICK:
 19 Q. If a writer had wanted to make a change to a
 20 character that Marvel did not agree with, who would
 21 have the final say in how that character would be
 22 depicted in the issue?
 23 MR. DILIBERTO: Objection, incomplete,
 24 hypothetical.
 25 THE WITNESS: Well, Marvel would have that

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1 right, which meant Stan or me that particular time.
 2 BY MS. KLEINICK:
 3 Q. Would that be true even for characters that
 4 the writer himself or herself had created?
 5 A. Well --
 6 MR. DILIBERTO: Objection, vague and
 7 irrelevant.
 8 THE WITNESS: As far as I was concerned, and
 9 I'm sure as far as Stan was concerned, yes, we had that
 10 authority. We didn't exercise it particularly, but --
 11 but we had it, we felt.
 12 BY MS. KLEINICK:
 13 Q. Did you ever have occasion to exercise it?
 14 A. Yes.
 15 Q. Okay --
 16 MR. DILIBERTO: Objection, vague.
 17 BY MS. KLEINICK:
 18 Q. Did you and Marv Wolfman ever come to any
 19 agreement where Wolfman would have complete control
 20 over either the story lines or the characters he
 21 created for the Tomb of Dracula series?
 22 MR. DILIBERTO: Objection, no foundation.
 23 THE WITNESS: I don't remember any specific
 24 discussion in that regard. He had authority to do
 25 whatever he wanted to do as the writer as long as Stan

1 long as it was subject to me and Stan. He was the next
 2 in line, serving as an unpaid editor.
 3 BY MS. KLEINICK:
 4 Q. Okay.
 5 A. Whether we used those terms or not, we joked
 6 about it from time to time.
 7 Q. Did Marv Wolfman have any agreement with
 8 Marvel that prohibited Marvel from allowing other
 9 writers from using characters that he introduced into
 10 the Tomb of Dracula series in other Marvel
 11 publications?
 12 MR. DILIBERTO: Objection; vague as to
 13 agreement and no foundation.
 14 THE WITNESS: Not that I'm aware of.
 15 BY MS. KLEINICK:
 16 Q. Did you ever have any discussion with Marv
 17 Wolfman where he demanded and you agreed to allow him
 18 to prevent any other writers from using characters that
 19 he introduced into Marvel story lines in other
 20 publications?
 21 MR. DILIBERTO: Objection, irrelevant.
 22 THE WITNESS: I don't recall any such
 23 conversation; however, in many cases, there might be
 24 characters that were so ingrained in a particular
 25 series that a writer might, for at least a certain

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1 or I didn't object, as far as I was concerned, and I
 2 felt he understood that, but other than that, I don't
 3 know. I don't remember any specific conversations
 4 about it, really.
 5 BY MS. KLEINICK:
 6 Q. Did you reach -- did you ever reach an
 7 agreement with any freelance writer where -- where you
 8 would give complete control over a story line or
 9 character to that writer?
 10 A. Well --
 11 MR. DILIBERTO: Objection; vague and no
 12 foundation.
 13 BY MS. KLEINICK:
 14 Q. Okay --
 15 A. You mean during this period when I was
 16 Editor-in-Chief?
 17 Q. Yes.
 18 A. No.
 19 Q. Do you recall ever reaching any agreement
 20 with Marv Wolfman where he would have complete control
 21 over either the stories or the characters or -- that he
 22 was introducing or the stories for any other series he
 23 wrote for Marvel?
 24 MR. DILIBERTO: Objection, irrelevant.
 25 THE WITNESS: He had the complete control as

1 indefinite period of time, might not want that
 2 character used in another book.
 3 And I would listen to those arguments and
 4 maybe have gone along with it, if there was a good
 5 reason. I don't recall whether we did or not. We
 6 didn't want this character used in another book right
 7 then because it would mess things up and so forth. But
 8 whether I had such a conversation with Marv or not, I
 9 don't recall.
 10 BY MS. KLEINICK:
 11 Q. Did you ever reach an agreement with any
 12 freelance writer where that freelance writer could
 13 forever prevent Marvel from allowing another writer to
 14 use the characters they introduce into the story
 15 lines?
 16 MR. DILIBERTO: Objection; irrelevant and no
 17 foundation.
 18 THE WITNESS: We never talked in terms of
 19 forever. We were always thinking of the next issue or
 20 two, was the furthest ahead we ever thought. I don't
 21 know how to answer a question that deals with forever
 22 exactly, except to say if it was forever, the answer
 23 had to be no. We just didn't think in terms of
 24 guaranteeing anything that far ahead. But maybe I
 25 didn't understand the question properly.

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1 BY MS. KLEINICK:

2 Q. I'll try to ask it a different way. If you
3 had determined that a character that Marv Wolfman had
4 introduced into the Tomb of Dracula series should make
5 an appearance in another series written by another
6 writer, did you have the authority to allow that other
7 writer to use the characters?

8 MR. DILIBERTO: Objection, irrelevant and
9 calls for speculation and incomplete, hypothetical.

10 THE WITNESS: Yes, I did have that
11 authority. Or at least I assumed I did, and no one
12 ever disabused me of that notion.

13 BY MS. KLEINICK:

14 Q. Were there any instances where a freelance
15 writer at Marvel wanted to use a character that another
16 freelance writer had introduced into a Marvel
17 publication, into a series -- and was permitted to do
18 so?

19 MR. DILIBERTO: Objection; vague and
20 irrelevant.

21 THE WITNESS: You're saying was there ever an
22 instance where you allowed a freelance writer to use a
23 character that had been introduced into a series by
24 another freelance writer?

25 BY MS. KLEINICK:

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1 Q. Yes, but I didn't finish the question
2 though --

3 A. I don't recall. I would have thought twice
4 about doing that. Potentially, of course, the answer
5 would be that I would have allowed that. But I would
6 be careful about it. You'd make another writer angry.

7 Q. Was it -- would the approval of the creator
8 of the character have been sought because it was
9 necessary or sought out of a courtesy --

10 MR. DILIBERTO: Objection; calls for
11 speculation or -- and irrelevant.

12 THE WITNESS: What were the choices?
13 (Off-the-record conference.)

14 BY MS. KLEINICK:

15 Q. You testified that --

16 A. I just meant two -- I just got --

17 Q. Necessity or courtesy --

18 A. In those two extremes, it would have been a
19 courtesy. I would have -- I would have felt we should
20 confer with the writer, but they were Marvel -- as far
21 as Stan was concerned, they were Marvel characters, and
22 if Marvel wanted to use them they had the right to do
23 so. If that was right or not, that was the way we did
24 things. It just didn't come up that often. Usually
25 people didn't object to characters being used in other

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1 books.

2 There were only a couple of other books here
3 and there that made sense. We didn't want Dracula
4 merged with the rest of the universe too much. Dracula
5 is a very powerful character, supervillain -- it would
6 take away some of his mystique. We had other horror
7 books like Werewolf by Night --

8 Q. With characters that had been introduced into
9 the Tomb of Dracula series?

10 A. I don't recall what characters were used. It
11 wasn't a consideration. That was up to the writer or
12 writers to settle. If there was a dispute -- if he
13 said, I can't use this character -- I don't recall that
14 ever coming up, so therefore, you know, I didn't have
15 to -- I don't remember ever having to make that
16 decision with regard to Dracula or any other books.

17 Q. Between 1972 and 1978, are you aware of
18 whether or not Marvel had a company policy concerning
19 who would own the rights to the stories written by
20 freelance writers for publications by Marvel?

21 MR. DILIBERTO: Objection, vague and no
22 foundation.

23 THE WITNESS: Well, they certainly had a
24 policy that Marvel owned full rights to whatever we did
25 for them; rightly or wrongly, that was their policy.

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1 BY MS. KLEINICK:

2 Q. Was that policy -- when you referred to all
3 rights, does that refer to -- what rights does that
4 encompass?

5 A. Well --

6 MR. DILIBERTO: Objection; calls for legal
7 conclusion and no foundation.

8 THE WITNESS: As far as we were concerned, it
9 covered all rights.

10 BY MS. KLEINICK:

11 Q. Between '72 and '78, did Marvel have a
12 company policy concerning who would own the rights to
13 any new characters introduced into a story line by a
14 freelance writer?

15 A. After '74, when I stepped down as
16 Editor-in-Chief, and especially after the middle
17 of '76, when I moved to California, I had increasingly
18 less connection, so something could have happened that
19 I was unaware of. To the extent I was aware of it, I
20 hadn't seen any company policy other than what I
21 understood it to be.

22 Q. What did you understand the policy to be?

23 A. That Marvel owned all rights to whatever we
24 wrote.

25 Q. Including the characters?

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1 A. Yes.

2 Q. Was Marvel's policy generally understood by

3 other freelance writers in the industry?

4 MR. DILIBERTO: Objection; calls for

5 speculation; no foundation.

6 THE WITNESS: I assumed that it was and in

7 conversations, I never heard anything I could recall to

8 the contrary. Of course, I can't vouch for what other

9 people really thought, because it wasn't part of my

10 job -- I'm not sure who -- my understanding of the

11 policy or --

12 BY MS. KLEINICK:

13 Q. As Editor-in-Chief, did you ever have any

14 discussions with any freelance writers concerning who

15 would own the rights to the materials that the

16 freelance writers were submitting for publication by

17 Marvel?

18 A. I did have -- I don't remember with whom. I

19 do recall having that conversation a couple of times,

20 not specifically with Marv. But I did have that

21 conversation from time to time, because from time to

22 time someone would ask me or would talk about it being

23 unfair or whatever. In fact, one of the last things I

24 did before I stepped down as Editor-in-Chief, by sheer

25 coincidence, was an artist who created a character sort

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1 of as a half writer himself wanted to get some extra

2 rights, and I told him that the company didn't have a

3 policy of doing anything like that, and if he didn't

4 want to offer the character, he just didn't have to

5 offer the character. That's the only time I

6 specifically recall that. That was in 1974.

7 Q. From 1974 -- at any time between 1972 and

8 1978, was the topic of who would own the rights to

9 materials submitted to the comic book companies a

10 subject of frequent discussion?

11 MR. DILIBERTO: Objection, vague and no

12 foundation, calls for speculation.

13 THE WITNESS: I don't know exactly what

14 frequent would mean. It was discussed, from time to

15 time. Mostly in terms of dissatisfaction, the company

16 either owned all rights or assumed they owned all

17 rights and writers and artists were not happy with the

18 fact that they got no royalties or residuals or

19 anything of this sort, and it was discussed in a

20 general sense, but not in any organized way, but it was

21 just grouching or in conversation over drinks or

22 something.

23 MS. KLEINICK: I'm going to mark as exhibit 2

24 a document bearing production numbers 5645 to 5647.

25 I'm sorry, Thomas 2 --

1 (Off-the-record conference.)

2 (THOMAS EXH. 2, Declaration, was marked for

3 identification.)

4 BY MS. KLEINICK:

5 Q. I'd like you to take a moment and look at the

6 documents that you have been handed as exhibit 2 in

7 this deposition and let me know whether or not you have

8 ever seen this document before.

9 A. Yes, I guess I signed it a year or so ago, a

10 year after conversations with the attorneys. For

11 Marvel. It was a -- sort of a distillation of our

12 conversation.

13 Q. And that -- is that your signature on the

14 page that's numbered Marvel 5647?

15 A. Yes.

16 Q. Did you read this declaration before you

17 signed it?

18 A. Yes.

19 Q. Was it true when you signed it?

20 A. To the best of my knowledge.

21 Q. Did you understand that either Marvel or --

22 or Marvin Wolfman might use this declaration in

23 connection with the lawsuit at some point in time?

24 A. Yes.

25 Q. Have you had a chance to read the declaration

1 today -- or before this --

2 A. Yes, you showed it to me earlier. I hadn't

3 seen it in some time, and I read it. Might have missed

4 a word here and there or something. I don't think I

5 missed anything of importance in it.

6 Q. Are the statements that you made in your

7 declaration back in July of '98 true today?

8 A. Well, to the best of my memory, they are.

9 The only direct quotation there, of course, is one that

10 was kind of speculative on my part, but the other --

11 the only ones in quotes, I mean, but the other things

12 are things that I felt then and I have seen -- I have

13 seen -- as far as I know, I see no reasoning to disown

14 any of them.

15 Q. I'd like to refer you to the last page, the

16 second part of paragraph seven, the sentence that

17 begins -- I'll read it into the record, it was

18 generally known that Marvel and D. C. owned the

19 copyrights and characters and if you worked for them,

20 that was the deal. Is that statement accurate?

21 MR. DILIBERTO: Objection; calls for legal

22 conclusion and calls for speculation and no

23 foundation.

24 THE WITNESS: It's accurate that it expressed

25 my belief. How accurate that is, I don't know. When I

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